

AMENDED IN ASSEMBLY APRIL 4, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 827

Introduced by Assembly Member Goldberg

February 18, 2005

An act to amend Section 94838 of the Education Code, relating to private postsecondary education.

LEGISLATIVE COUNSEL'S DIGEST

AB 827, as amended, Goldberg. Private postsecondary education: instruments of indebtedness: *tuition loans*.

Existing law, known as the Private Postsecondary and Vocational Education Reform Act of 1989, generally sets minimum standards of instructional quality, ethical and business practices, health and safety, and fiscal responsibility for private postsecondary and vocational educational institutions, as defined. The act establishes the Bureau for Private Postsecondary and Vocational Education, which, among other things, is required to review and investigate all institutions, programs, and courses of instruction approved under the act. A provision of the act renders it inoperative on July 1, 2007, and provides for its repeal on January 1, 2008.

An existing provision of the act prohibits a private postsecondary or vocational institution from enforcing a note, other instrument of indebtedness, or contract relating to payment for educational services unless, at the time of the execution of the note, instrument, or contract, the institution has a valid approval to operate under the law and the note, instrument, or contract meets other specified requirements.

This bill would ~~make a technical, nonsubstantive change in that provision~~ *also prohibit a private postsecondary or vocational*

institution from enforcing a tuition loan, as defined, unless these specified requirements are met.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 94838 of the Education Code is
2 amended to read:

3 94838. (a) No note, other instrument of indebtedness, or
4 contract relating to payment for educational services shall be
5 enforceable by any institution within or outside this state
6 governed by this chapter, *and no tuition loan shall be*
7 *enforceable*, unless at the time of execution of that note, other
8 instrument of indebtedness, *tuition loan*, or contract, the
9 institution has a valid approval to operate pursuant to this
10 chapter.

11 (b) No note, other instrument of indebtedness, or contract
12 relating to payment for educational services shall be enforceable
13 by any institution within or outside this state governed by this
14 chapter, *and no tuition loan shall be enforceable*, unless the
15 agent, who enrolled persons to whom educational services were
16 to be rendered or to whom degrees or diplomas were to be
17 granted pursuant to this chapter, held a valid agent's permit at the
18 time of execution of the note, other instrument of indebtedness,
19 *tuition loan*, or contract.

20 (c) Any school or institution governed by this chapter
21 extending credit or lending money to any person for tuition, fees,
22 or any charges whatever for educational services to be rendered
23 or furnished shall cause any note, instrument, or other evidence
24 of indebtedness taken in connection with that loan or extension
25 of that credit to be conspicuously marked on the face thereof with
26 the following notice:

27

28

“NOTICE

29

30 ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT
31 IS SUBJECT TO ALL CLAIMS AND DEFENSES THAT THE
32 DEBTOR COULD ASSERT AGAINST THE SELLER OF
33 GOODS OR SERVICES OBTAINED PURSUANT HERETO

1 OR WITH THE PROCEEDS HEREOF, RECOVERY
2 HEREUNDER BY THE DEBTOR SHALL NOT EXCEED
3 AMOUNTS PAID BY THE DEBTOR HEREUNDER.”

4 In the event the school or institution fails to do so, it shall be
5 liable for any damage or loss suffered or incurred by any
6 subsequent assignee, transferee, or holder of that evidence of
7 indebtedness on account of the absence of that notification.

8 (d) Notwithstanding the presence or absence of the notification
9 described in subdivision (c), and notwithstanding any agreement
10 in which the student waives the right to assert any claim or
11 defense, the school or institution making that loan or extending
12 that credit and the transferee, assignee, or holder of that evidence
13 of indebtedness, shall be subject to all defenses and claims that
14 could be asserted against the school or institution that was to
15 render or furnish those educational services by any party to that
16 evidence of indebtedness or by the person to whom these
17 educational services were to be rendered or furnished up to the
18 amount remaining to be paid thereon.

19 (e) Institutions that participate in federal student assistance
20 programs and that comply with the financial disclosure and
21 notification requirements for those programs shall be deemed to
22 be in compliance with the standards prescribed by this section.

23 (f) (1) *For the purposes of this section, “tuition loan” means a*
24 *loan that the creditor knows, at the time the loan is made, is to be*
25 *used, in whole or in part, to finance all or a portion of the tuition,*
26 *fees, or charges for educational services that are subject to this*
27 *chapter.*

28 (2) *The creditor shall be deemed to know that the tuition loan*
29 *is to be used, in whole or in part, to finance all or a portion of*
30 *the tuition, fees, or charges for educational services under any of*
31 *the following circumstances:*

32 (A) *The loan application or other documents in the creditor’s*
33 *possession before the loan is made indicate that any loan*
34 *proceeds will be used to pay for tuition, fees, or charges for*
35 *educational services subject to this chapter.*

36 (B) *The creditor distributes any loan proceeds to a school or*
37 *institution that is subject to this chapter.*

38 (C) *The school or institution arranges or guarantees the loan,*
39 *or receives from the creditor a commission, brokerage fee, or*
40 *referral fee.*

1 (D) *The creditor knows, or by the exercise of reasonable care*
2 *has reason to know, that the school or institution participates in*
3 *the preparation of the student's application for credit or other*
4 *loan documents, or transmits the student's application for credit*
5 *or other loan documents to the creditor.*

6 SEC. 2. *If any provision of this act or the application thereof to*
7 *any person or circumstance is held to be unconstitutional, the*
8 *remainder of the act and the application of that provision to*
9 *other persons and circumstances shall not be affected thereby*